?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 31.10.2018

*CORAM
THE HON-BLE MR.JUSTICE G.K.ILANTHIRAIYAN

+CRL.O.P.(MD)No.5013 of 2015
and M.P.(MD)No.1 of 2015

#J.Aruldoss
... Petitioner

~vs~

$Elizabeth
... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records of the order dated 16.02.2015 in Crl.M.P.No.73 of 2015 in C.C.No.759 of 2012 on the file of the Fast Track Court (Magistrate Level) No.I, Nagercoil and set aside the same.
!For Petitioner : Mr.K.N.Thampi

^For Respondent : Mr.K.Prabhu

:ORDER
This Criminal Original Petition has been filed to quash the order dated 16.02.2015 made in Crl.M.P.No.73 of 2015 passed by the learned Fast Track Court (Magistrate Level) No.I, Nagercoil.

2.The petitioner herein is a complainant and he filed a complaint for the offence under Section 138 Negotiable Instrument Act as against the respondent herein. The petitioner herein was examined as P.W.1 on 13.03.2014 and he was cross~examined by the accused on 27.10.2014 and again cross~examined on 26.11.2014. During the cross~examination, some typographical errors made in his cross~examination. Therefore, the petitioner filed a petition to re~call P.W.1 under Section 311 Cr.P.C. and the same was dismissed. Aggrieved by the same, this Criminal Original Petition has been filed.

3.The learned counsel appearing for the petitioner would submit that there are typographical errors in the recording of deposition of P.W.1, whose evidence is crucial for the offence under Section 138 Negotiable Instruments Act. Further he would submit that recall of P.W.1 only to correct the mistake while recording the evidence and if at all rectifying the mistakes while recording the cross~examination of P.W.1. Therefore, he sought for set aside the order passed by the Court below.

4.The learned counsel appearing for the respondent would submit that

only to fill up the lacuna, the petitioner filed a petition to recall P.W.1 evidence. The petitioner, being an advocate, must know what is recorded during cross~examination and what mistake committed by the Court below. Knowing fully very well, he signed in cross~examination and now he filed a petition to recall the evidence of P.W.1. It is only to full up the lacuna and as such the Court below rightly dismissed the petition filed under Section 317 Cr.P.C. and he prayed for a dismissal of this petition.

5.Heard the learned counsel on either side.
6.The petitioner / defacto complainant filed a complaint for the offence under Section 138 Negotiable Instruments Act as against the respondent. On 13.03.2014, the petitioner was examined as P.W.1 and he was cross~examined on 27.10.2014. On 26.11.2014 again he was cross~examined. On that cross~examination, there are some typographical error has mentioned in the petition filed by the petitioner under Section 311 Cr.P.C.

7.Though the petitioner is being an Advocate, he did not notice the mistakes committed during typing of the cross~examination of P.W.1. While recording the Court proceedings, there would be some urgency and there is no possibilities for noticing the typographical error committed during typing. Therefore, no prejudice would be caused to the respondent, if the petition is allowed to recall the evidence of P.W.1. Hence, to meet the ends of justice this Court feels to interfere with the order passed by the Court below.

8.Accordingly, the order dated 16.02.2015, made in Crl.M.P.No.73 of 2015 in C.C.No.759 of 2012, on the file of the Fast Track Court (Magistrate Level) No.I, Nagercoil, is hereby set aside and this Criminal Original Petition is allowed. The petitioner is directed to complete his side evidence within a period of 30 days from the date of receipt of a copy of this order and thereafter, the Court below is directed to complete the trial process, within a period of six months. Connected miscellaneous petition is closed.

To

The Fast Track Court (Magistrate Level) No.I,
Nagercoil.